

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through XVIII pertaining to)
the elevator services occupational)
licensing program)

TO: All Concerned Persons

1. On November 23, 2005, the Department published MAR Notice No. 24-142-1 regarding the public hearing on the proposed adoption of the above-stated rules relating to the elevator services occupational licensing program, at page 2293 of the 2005 Montana Administrative Register, issue no. 22.

2. On December 15, 2005, at 9:00 a.m., a public hearing was held in Helena, Montana, and several members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period.

3. The Department has thoroughly considered all of the comments made. A summary of the comments received and the Department's responses are as follows:

Comment 1: A comment was received that during the passage of Senate Bill (SB) 412 the term elevator was purposely not associated with the limited mechanic license. This limited mechanic license was for residential work only and it is understood that any commercial elevator installation such as for churches, businesses, or public buildings must be performed by a company that holds an elevator contractors license. All references in the new elevator program rules to a "limited elevator mechanic's license" should be changed to reflect that they are "limited mechanics licenses." Another commenter stated that the term "license limited residential mechanic" is an option to clarify this as well.

Response 1: The Department agrees with the commenter and has deleted the term elevator in the rules as suggested. Placing "elevator" after "limited" was an oversight in the rules and has been removed from all sections of the new rules. The current law, 37-73-203(5), MCA, specifically states that a limited mechanic license authorizes a licensee to work only on platform lifts, stairway chairlifts, and dumbwaiters that are installed in private residences. This law does not grant the Department the authority to allow a limited mechanic to work on nonresidential installations. The law does not define or use the term residential mechanic so therefore residential mechanic is not used to describe those that work only on residential elevators.

Comment 2: Three commenters stated that the fees for a temporary permit should be reduced from \$50 to \$25. One stating that \$25 was more reasonable and the other stating that it would be similar to the State of Washington if reduced.

Response 2: Fees must be commensurate with costs as required by 37-1-134, MCA. The fees were set based on the Department's best estimates for licensure costs in Montana. The fees will be monitored and changed accordingly (either up or down) as required in the future, in keeping with the statutory requirement.

Comment 3: Three commenters stated since the law was signed into effect on April 19, 2005, this date should be used for prior experience instead of October 1, 2005.

Response 3: The effective date of the legislation is the date used. Although Senate Bill 412 was signed by the Governor in April 2005, the effective date was not until October 1, 2005, as indicated in the bill itself. Therefore, the Department concludes that the prior experience must have been obtained by October 1, 2005, pursuant to 37-73-203, MCA.

Comment 4: A comment was received that the state should require elevator installers who previously worked on elevators to have three years experience to qualify for grandfathering. Consideration by the state should be made focusing on the amount of elevator work the person has completed. In the State of Washington, 1,800 hours is considered one year of experience.

Response 4: The Department will review and consider for licensure all applicants that can demonstrate they have attained at least three years of experience. Based on a typical nine-month construction season in Montana, 1,500 hours per year will be required. The 1,500 hours per year provision has been added to the qualifications for elevator mechanics in New Rule VII.

Comment 5: Three commenters stated that work done under a temporary permit should be allowed to be checked on an appropriate basis rather than on a daily basis. These comments are based on the following: If an elevator contractor had an elevator mechanic available to check the work daily there would be no need for a temporary permit. Secondly, based on the size of Montana it could create a hardship on the company to supply a mechanic to travel for daily checks on installation. Third, upon completion of a job the state sends an elevator inspector to inspect the installation. Finally, if a mechanic goes on vacation they would be checked when the mechanic returned.

Response 5: New Rule XII regarding the temporary permit has been amended to remove the checking of work on a daily basis. However, the elevator contractor is still responsible for ensuring that work performed by an individual working under a temporary permit is checked to ensure public safety. The elevator inspector is not the responsible party to ensure that each aspect of the installation is done correctly.

Comment 6: Many individuals stated concerns about being limited to residential installations only. They stated that similar conveyances are also installed in churches or as handicap access to buildings. Current contractors expressed worry about being put out of business by the new laws and rules.

Response 6: The Department is obligated to implement the laws enacted by the Montana legislature, which in 2005 made the public policy decision to require licensure in the elevator and lift industry. The current law, 37-73-203(5), MCA, specifically states that a limited mechanic license authorizes a licensee to work only on platform lifts, stairway chairlifts, and dumbwaiters that are installed in private residences. This law does not grant the Department the authority to allow a limited mechanic to work on nonresidential installations. Commercial (e.g., nonresidential) installations will require an elevator contractor's license and licensed elevator mechanics for the installation. Those with experience of at least three years prior to October 1, 2005, will be grandfathered in as appropriate.

Comment 7: A commenter stated that the law does not appear to address the area of handicap and limited use/limited application ("LU/LA") type conveyances. The commenter posed the question whether the commercial elevator contractors would be prepared to perform this type of work. A church typically does not want to add an elevator for full public conveyance but simply to meet handicap accessibility requirements. This is true for small businesses as well. Past impressions on this subject have led the commenter to believe that the commercial contractors are not interested in this type of work.

Response 7: Types of nonresidential installations that a limited mechanic may install cannot be addressed in these rules; such changes would require legislative action. Current statute allows limited mechanics to work on only residential installations.

Comment 8: A comment was made regarding New Rule V(4) in that it does not appear to include the limited elevator contractor. It appears to only include licensed elevator contractors. Subsections (5), (6), (7), (8) seemed to include both limited and elevator contractors.

Response 8: Section (4) was designed to apply to limited elevator contractors as well as elevator contractors. Neither limited elevator contractors nor elevator contractors can allow any person who does not meet the requirements listed in (4)(a) through (c) to perform installation or repair work. The rule has been amended accordingly.

Comment 9: Three individuals expressed concern over using only licensed individuals for installations. The common term used was "helper" and the need to be able to use unlicensed individuals to help move large components of an installation. A related concern was an increased expense of an installation will be passed on to Montana residents if all individuals must be licensed.

Response 9: An addition has been made to the definition rule (New Rule II) to include "helper" which means an individual who is assisting with the installation of conveyance components by a licensed elevator mechanic or limited mechanic.

Comment 10: The process of obtaining a limited mechanic's license is not described in rule although New Rule X does describe the elevator mechanics license application process. Does the grandfather clause apply to a limited mechanic and the limited elevator contractor?

Response 10: The Department has changed the catchphrase of New Rule X to include limited mechanics because the application process would be similar to an elevator mechanic. The only difference is the type of experience required to obtain a license, which is specified in New Rule VIII. New Rule VIII was corrected to include limited mechanics licensure qualifications. Time requirements for qualifications as a limited mechanics license were changed to one year because three years was placed in the rule inadvertently. Statutes do not permit grandfathering of licensure for limited mechanics.

Comment 11: A commenter stated that there was no specific mention of factory, manufacturer's schools, trade schools or colleges that supply continuing education courses. In addition, the commenter also stated industry related supplied reading material, online Internet classes, or phone conference classes should be acceptable toward meeting the continuing education requirements, but there is no mention of them qualifying.

Response 11: Courses are not restricted to mandatory attendance at a specific location. Sponsors will be able to submit online, correspondence, or any other method of course delivery for Department approval. All course sponsors will be able to register their courses, regardless of the method of instruction, with the Department, providing they meet the requirements set out in New Rule XV.

Comment 12: A commenter stated that some of the requirements for the continuing education sponsoring organizations seem impractical. One requirement is the retention of records for ten years. The licensees should be responsible for keeping their own records. Secondly, why does the Department feel that all course sponsors in the country will get their courses approved in Montana? The Department should make it as easy as possible to maintain and further an individual's education and knowledge. The eight-hour continuing education requirement every two years makes it imperative that the licensee has good educational avenues available to maintain this requirement.

Response 12: The Department has reduced the requirement for record retention to three years. The Department views it as the responsibility of the licensee to present proof of attendance if audited; therefore if a licensee wants to attend a qualifying course, the licensee must first make sure the course is approved by the Department. A list of approved courses and sponsors will be made available for the licensees to reference. The Department does not prohibit a licensee from presenting a course being offered for approval, but the licensee or sponsor must pay the continuing education course curriculum approval fee as specified in the fee schedule and the course must be approved.

Comment 13: A commenter believes that the rules are not specific as to the type of license that they are applicable to such as mechanics or contractors.

Response 13: The Department has made changes to the proposed rules to identify which level or type of license is being addressed. As far as contractors are concerned, anyone may own an elevator contracting business. Elevator contractors must meet business requirements such as obtaining liability insurance, providing proof of workers' compensation and unemployment insurance; or an independent contractor's exemption. Elevator contractors must also employ appropriate licensed staff as indicated in New Rule XI Elevator Contractor Applications.

Comment 14: The fee schedule indicates a fee for approval of a continuing education course. A commenter asked if the approval fee applies each time a licensee comes to the Department for approval, or if the fee is for an annual or two-year period.

Response 14: This fee is a one-time fee for the period of the course approval, and would be paid by the course sponsor. Courses will be reviewed and approved or denied as received. All approved courses will be valid until May 1 of each renewal year. If a new course is approved on May 2, 2006, it will be valid until May 1, 2008.

Comment 15: Two commenters stated that contractors that have been installing residential and commercial elevators for over three years should be grandfathered in with an unrestricted license. One of the commenters emphasized that all employees who have installed, maintained, and repaired elevators for over three years should be grandfathered in as elevator mechanics. The commenter argued that because Montana is not a heavily populated state, there is not enough business in conveyance devices to have full-time employees who perform conveyance system installations. Commercial elevators are half of the commenter's business, and without a grandfathering clause, the commenter would be driven out of business by larger companies who may charge the public higher prices.

Response 15: Employees of elevator contractors who have performed elevator installations for at least three years may qualify for licensure without an exam. The experience requirement may be applied toward their license application if an applicant provides evidence of performing at least three years of elevator installation work. Applicants will be responsible for providing evidence of the type of elevator work performed and duration of this type of experience.

The length of experience does not limit a business from obtaining a contractors license. Any business that employs a licensed elevator mechanic may apply for licensure as an elevator contractor, and anyone who employs a limited mechanic may apply for licensure as a limited elevator contractor.

Comment 16: Two commenters questioned the ability to hire a person to work on conveyances in a "full-time basis" as described in the proposed rule. It is difficult with the amount of work to keep someone on a full-time basis to do elevator work.

Response 16: In the context of licensing, "full-time" means the responsible licensed employee is available to perform, administer, and supervise an elevator installation. This does not prohibit the licensee from doing other types of work for the contractor.

Comment 17: Since the state is requiring continuing education, two commenters believe that the state has the responsibility to make available educational opportunities by in-state classes, online training, or correspondence courses. The classes should be offered in a one or two-day class to keep down travel costs and they should be offered in eastern and western parts of the state. In addition, it would be expensive to get course credits from manufacturers because they are all out-of-state.

Response 17: When the Legislature passed this new law, they included the requirement for continuing education. The Department is committed to implementing the new requirements and will monitor the continuing education requirements. Continuing education requirements may be addressed in the future if it is found unworkable. The continuing education rules do not exclude online training or correspondence courses. Course sponsors have the flexibility to offer courses through whatever methods are feasible to both them and their students.

Comment 18: A commenter stated that residential mechanics are required to be licensed under New Rule II(12).

Response 18: The commenter is correct but the term "residential mechanic" is not used in the new law and thus not in the proposed rules as a result. Residential mechanics, as the commenter suggests, would be the same as a limited mechanic.

Comment 19: A commenter argued the new rules state that limited elevator mechanics would be limited to residential work only. The commenter's company has been working for ten years on commercial buildings such as schools, churches, and businesses installing vertical platform lifts and LU/LA elevators. Becoming licensed as a limited elevator contractor is not acceptable to the commenter.

Response 19: First, residential elevators, by law, may only be installed in residential settings. Residential elevators may not be installed in churches, schools, or businesses, regardless of the limited use the elevator may have. Second, because of the grandfathering process that is allowed under 37-73-203, MCA, all elevator mechanics that have at least three years experience prior to October 1, 2005, will be considered for licensure as an elevator mechanic. Section 37-73-203, MCA, requires that the applicant have experience with commercial conveyances of over three years, otherwise the applicant may only qualify for a limited mechanic's license. The Department notes that it does not have the authority to issue a license unless the applicant meets the qualifications provided by law.

Comment 20: A commenter stated with respect to residential elevators, because there is no inspection requirement and in order to ensure installations are completed

per building code, elevator mechanics should be full-time mechanics for public or private elevators. The commenter suggested that "full-time" should be defined as 70% elevator work and 30% other applications. The commenter stated such a rule would improve safety for residential applications.

Response 20: Inspection requirements are set by the Department's Building Codes Bureau and are not included in these licensing rules. The Department believes that monitoring the percentage and types of work performed by each licensee would be difficult to accomplish and enforce. In addition, the Department does not have the legal authority to impose additional restrictions upon licensees (such as specifying the ratio of one form of work to another form of work) that is not provided in statute.

Comment 21: A commenter stated that apprentice registration does not appear to be available for vertical platform lifts and LU/LA elevators. The commenter would like to be able to provide training and schooling while working a trainee on the job.

Response 21: To ensure the quality of the education and to protect the public safety, an apprentice must be enrolled in an apprenticeship program recognized by the Department. To establish an apprenticeship program, contractors are encouraged to contact the Department's Apprenticeship and Training Program at (406) 444-3556.

Comment 22: Under New Rule VIII, a commenter stated that two years of experience under a licensed elevator mechanic should be considered. This would mean two years of full-time elevator mechanic training in the area of LU/LA elevators and vertical platform lifts, both in commercial building and residential applications.

Response 22: Current law as adopted by the Legislature requires three years of experience before October 1, 2005, in order to be "grandfathered" into a license. Any deviation would require a statutory change. The Department does not have the authority to change the three year experience requirement in administrative rule.

Comment 23: A commenter noted that the term "residential elevator" as described in the rules conflicts with section 5.3 of the ASME A17.1 Safety Code for Elevators. The commenter stated that rules regarding residential elevators should be the same as the elevator code adopted by the Building Codes Bureau.

Response 23: New Rule II describing a residential elevator has been amended to reflect the language suggested by the Building Codes Bureau.

Comment 24: A commenter stated that requiring a form and the tracking of unlicensed individuals who perform operational testing and maintenance is impractical given the limited number of Department staffers who are available for field inspections and monitoring related to the elevator occupations licensing program.

Response 24: The Department has removed the requirement for submission of a form before operational testing and maintenance occurs. The Department did not intend to monitor general daily activities of unlicensed individuals performing general testing and maintenance.

Comment 25: A commenter suggested that the rules needed to also list certified cities, counties and towns as the local authority having permit issuing jurisdiction.

Response 25: New Rule V has been amended to read that elevator contractors must meet permitting requirements.

Comment 26: A commenter expressed the belief that the list of entities approved for certification of elevator inspectors is not correct, and that the American Safety Institute does not certify elevator inspectors. The commenter also stated that the Department should accept certification by the National Association of Elevator Safety Authorities, or other suitably qualified educators on elevator inspection practices and standards.

Response 26: The language of New Rule IX has been amended to address the comment.

Comment 27: A commenter stated that the Department should consider allowing elevator inspectors to become certified within six months of being hired.

Response 27: Although the Department has provided for a six month transition period for existing elevator inspectors, the Department believes that it does not have the discretion under law to authorize a non-credentialed, and therefore non-licensed, elevator inspector to perform elevator inspections if that person was hired on or after October 1, 2005. Employer hiring practices will need to address when and how an elevator inspector is hired and trained if the employer hires a person who is not qualified to immediately obtain a Montana elevator inspector license.

Comment 28: During the compiling of the comments and drafting responses, the Department noted that section (9) in New Rule VI, Fee Schedule, was a duplicate of (4), the renewal fee.

Response 28: New Rule VI(9) has been deleted.

4. After consideration of the comments, the Department has adopted New Rule XVI (24.142.2103), New Rule XVII (24.142.2101), and New Rule XVIII (24.142.2401) exactly as proposed.

5. After consideration of the comments, the Department has adopted New Rule I (24.142.401), New Rule II (24.142.301), New Rule III (24.142.302), New Rule IV (24.142.405), New Rule V (24.142.404), New Rule VI (24.142.402), New Rule VII (24.142.501), New Rule VIII (24.142.502), New Rule IX (24.142.506), New Rule X (24.142.503), New Rule XI (24.142.507), New Rule XII (24.142.504), New Rule XIII

(24.142.509), New Rule XIV (24.142.510), and New Rule XV (24.142.2102), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.142.401) GENERAL (1) remains as proposed.

(2) Any person wishing to perform conveyance work that is regulated by the department must be a licensed elevator mechanic or limited mechanic employed by a licensed elevator contractor.

(3) remains as proposed.

AUTH: 37-1-101, 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-216, MCA

NEW RULE II (24.142.301) DEFINITIONS (1) and (2) remain as proposed.

~~(3) "ASI" means the American Safety Institute.~~

(4) remains as proposed but is renumbered (3).

~~(5)~~ (4) "Apprentice" means an individual who is working with and receiving training from an elevator mechanic or limited mechanic licensed under this chapter and who is registered by an appropriate governmental unit.

(6) through (9) remain as proposed but are renumbered (5) through (8).

(9) "Helper" means an individual who is assisting with the installation of conveyance components by a licensed elevator mechanic or limited mechanic.

(10) and (11) remain as proposed.

(12) "Limited ~~elevator~~ mechanic" means any person who is engaged in the installation, alteration, servicing, replacing, or maintaining of residential elevators, or other conveyances platform lifts, stairway chairlifts, and dumbwaiters in private residences ~~only~~.

(13) and (14) remain as proposed.

(15) "NAESA" means the National Association of Elevator Safety Authorities.

(15) through (16) remain as proposed but are renumbered (16) through (17).

~~(17)~~ (18) "Residential elevator" means a powered or passenger conveyance which is installed in a private residence ~~or multiple unit dwelling as a means of access to private residences,~~ where the access to or control of the ~~elevator conveyance~~ is restricted from public access to the residents of the residence or multiple unit dwelling.

(18) remains as proposed but is renumbered (19).

(20) "Responsible limited mechanic" means a designated individual employed by a licensed limited elevator contractor who is hired on a fulltime basis to ensure that all work performed by the mechanic's employer is code compliant.

(19) remains as proposed but is renumbered (21).

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-202, 37-73-203, 37-73-204, 37-73-208, 37-73-212, 37-73-216, MCA

NEW RULE III (24.142.302) EXCEPTIONS (1) through (1)(e) remain as proposed.

(2) Elevator mechanic licenses are not required for operational testing and maintenance work that is performed on conveyances when the appropriate lockout and tagout procedures have been performed by the person doing that work. ~~The department must be notified of and must approve the scope of work on a form provided by the department prior to it being performed.~~

(a) through (4) remain as proposed.

(5) A licensed elevator contractor may use a helper to assist a licensed elevator mechanic or limited mechanic during an installation. Assistance does not include performing any function that requires knowledge, skills, or abilities of an elevator mechanic or limited mechanic.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

NEW RULE IV (24.142.405) APPRENTICE REGISTRATION

(1) Elevator mechanic or limited mechanic licenses are not required for individuals who provide evidence of apprenticeship registration from:

(a) through (c) remain as proposed.

(2) An apprentice shall work under the direction, control, and supervision of a licensed elevator mechanic or limited mechanic ~~at all times~~ while the apprentice is performing or learning to perform elevator mechanic or limited mechanic duties and functions.

(3) remains as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-202, MCA

NEW RULE V (24.142.404) LICENSEE RESPONSIBILITIES

(1) Licensed elevator mechanics, limited ~~elevator~~ mechanics, elevator contractors, limited elevator contractors, or elevator inspectors shall have their licenses available on job sites at all times when employed in these capacities. Elevator mechanic or limited mechanic apprentices shall have their registration card, issued by the department, on their persons at all times when so employed. A licensed elevator mechanic, limited ~~elevator~~ mechanic, elevator contractor, limited elevator contractor, elevator inspector, ~~or~~ elevator mechanic apprentice, or limited mechanic apprentice who does not have the required proof of licensure or apprenticeship registration while working in one of those capacities is subject to the issuance of a licensing citation in accordance with 37-73-225, MCA.

(2) A licensed limited ~~elevator~~ mechanic shall:

(a) through (3) remain as proposed.

(4) A licensed elevator contractor or limited elevator contractor shall not allow any person to perform elevator or other conveyance installation or repair work unless the person is:

(a) through (c) remain as proposed.

(5) Elevator contractors are responsible for obtaining any permit required by the state of Montana or a certified local building code enforcement authority relating

to elevator equipment and are responsible for ensuring that work performed complies with the permitting requirements ~~of the state of Montana.~~

(6) Elevator contractors, limited elevator contractors, elevator mechanics, or limited elevator mechanics may not allow their license to be used by other individuals, firms, corporations, or businesses for the purpose of obtaining elevator permits or for performing elevator conveyance work.

(7) remains as proposed.

(8) An elevator contractor, limited elevator contractor, elevator mechanic, or limited elevator mechanic may not perform work beyond the scope of the individual's license.

(9) and (10) remain as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-406, 37-1-410, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-220, MCA

NEW RULE VI (24.142.402) FEE SCHEDULE (1) through (8) remain as proposed.

~~(9) License renewal~~ 150

(10) and (11) remain as proposed but are renumbered (9) and (10).

AUTH: 37-1-101, 37-73-102, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, 37-73-102, 37-73-201, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 37-73-221, MCA

NEW RULE VII (24.142.501) DOCUMENTATION OF SUITABLE TRAINING AND EXPERIENCE (1) through (3) remain as proposed.

(4) 1500 hours of work constitutes a year's worth of work experience.

AUTH: 37-73-102, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

NEW RULE VIII (24.142.502) ELEVATOR MECHANIC AND LIMITED MECHANIC LICENSURE QUALIFICATIONS (1) and (1)(a) remain as proposed.

(b) performed three years verifiable conveyance work, ~~which:~~

~~(i) is at least 70% construction or maintenance based; and~~

~~(ii) does not rely upon residential experience to comprise more than 30% of the total three year requirement.~~

(2) An applicant for a limited elevator mechanic's license shall furnish evidence satisfactory to the department that the applicant has:

(a) remains as proposed.

(b) ~~three~~ one years of verifiable work experience in performing residential conveyance work.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-204, 50-60-203, MCA

NEW RULE IX (24.142.506) ELEVATOR INSPECTOR QUALIFICATIONS --
TRANSITION PERIOD (1) and (1)(a) remain as proposed.

- (b) ~~ASA~~ NAESA; ~~or~~
 - (c) ~~ASME~~; or
 - (d) another elevator inspector certification from a provider entity, as approved by the department on a case-by-case basis.
- (2) remains as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-208, MCA

NEW RULE X (24.142.503) ELEVATOR MECHANIC AND LIMITED
MECHANIC APPLICATIONS (1) and (2) remain as proposed.

(3) ~~Applicants~~ Elevator mechanic applicants who can, under oath, provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who also possess the requisite experience for licensure may be licensed without examination upon payment of the application fee.

AUTH: 37-1-105, 37-73-102, 50-60-203, MCA

IMP: 37-1-105, 37-73-102, 37-73-201, 37-73-203, 37-73-204, 37-73-221, MCA

NEW RULE XI (24.142.507) ELEVATOR CONTRACTOR APPLICATIONS

(1) through (2)(a) remain as proposed.
(b) employs a licensed limited ~~elevator~~ mechanic, named on a form provided by the department, as the ~~elevator~~ mechanic responsible for code compliance on all work performed under that contractor license.

(3) and (4) remain as proposed.

(5) An owner of a limited elevator contracting business not licensed as a limited ~~elevator~~ mechanic shall employ a limited ~~elevator~~ mechanic to perform all work done under that contractor's license. No holder of a limited ~~elevator~~ mechanic's license can be named as the responsible ~~elevator~~ limited mechanic for more than one elevator contractor at any given time.

(6) A responsible elevator mechanic or responsible limited mechanic who leaves the employment of a licensed elevator contractor, for whatever reason, must provide written notification to the department of that fact within ten working days. The licensed elevator contractor must notify the department within ten working days, on a provided form, of the change of responsible elevator mechanic or responsible limited mechanic.

(a) Failure to name another responsible elevator mechanic or responsible limited mechanic, as applicable, within ten working days is cause for disciplinary action, including suspension or revocation of the elevator contractor's license.

(7) A licensed elevator mechanic or limited ~~elevator~~ mechanic may be relieved from further responsibility under any application or permit if the elevator mechanic or limited ~~elevator~~ mechanic has left or been discharged from the employment of an elevator contractor or owner, provided the elevator mechanic or

limited elevator mechanic sends a notice in writing to that effect within ten working days of the last day of employment to the department or the state or local building code enforcement entity, whichever is applicable.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-212, 50-60-203, 50-60-716, MCA

NEW RULE XII (24.142.504) TEMPORARY PRACTICE PERMIT

(1) through (2)(b) remain as proposed.

(c) in the case of an apprentice seeking a temporary practice permit, documentation from a state apprenticeship and training bureau or program that the apprentice has completed no less than 70% of the apprentice's required term and is completely current with related instruction. ~~An apprentice's work done under a temporary practice permit must be physically examined on a daily basis by a licensed elevator mechanic for correctness.~~

(3) and (4) remain as proposed.

(5) In the event the department determines that a shortage of licensed elevator mechanics or limited mechanics exists to the extent that, if left uncorrected, it could have a materially adverse impact on public health, safety, and well-being, the department may issue a temporary practice permit for an elevator mechanic or limited ~~elevator~~ mechanic.

(a) A licensed elevator contractor may submit written notification to the department that a shortage of licensed elevator mechanics or limited mechanics exists. The elevator contractor must be in good standing with the department and have no active complaints against the licenses of the contractor or the contractor's employees before the contractor is eligible to declare a shortage of elevator mechanics or limited mechanics for the contractor's business. Sufficient proof of a bona fide shortage of licensed elevator mechanics or limited mechanics must accompany the written notification and must include:

(i) through (iii) remain as proposed.

(6) Upon consideration and subsequent finding by the department that a contractor's claimed shortage of elevator mechanics or limited mechanics is bona fide to the extent that, if left uncorrected, an adverse material impact on public health, safety, and well-being will result, the department will issue temporary practice permits as it deems prudent and appropriate to temporarily remedy the ~~elevator~~ mechanic shortage.

(7) remains as proposed.

(a) Subsequent temporary practice permits will be issued only if continued monitoring by the department indicates a bona fide elevator mechanic or limited mechanic shortage continues to exist.

(8) remains as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-216, 50-60-203, MCA

NEW RULE XIII (24.142.509) EXAMINATIONS (1) through (3) remain as proposed.

(4) An applicant who has failed the elevator mechanic examination two or more times is not prohibited from taking the limited ~~elevator~~ elevator mechanic's licensing examination. Applicants must submit a request in writing to the department requesting the lower level examination at any subsequent time.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-204, MCA

NEW RULE XIV (24.142.510) LICENSURE BY RECIPROCITY OR ENDORSEMENT (1) The department may, on a case-by-case basis, enter into reciprocity agreements with other states or jurisdictions whose requirements are substantially equivalent to or greater than the standards of this state as a basis to issue elevator mechanic or limited ~~elevator~~ elevator mechanic licenses.

(2) and (3) remain as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-204, MCA

NEW RULE XV (24.142.2102) CONTINUING EDUCATION SPONSORS AND COURSES (1) through (2)(a) remain as proposed.

(b) A sponsor must keep uniform records, for a period of 40 three years, of attendance of licensees and these records must be available for inspection by the department at its request. Those records must include:

(i) through (6) remain as proposed.

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-220, MCA

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006